

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Revision of the Commission's Rules)
 To Ensure Compatibility with Enhanced)
 911 Emergency Calling Systems)
)
 Chicago 20 MHz LLC)
 Request for Waiver of Sections 20.18(e)-(h))
 of the Commission's Rules)

CC Docket No. 94-102

To: The Wireless Telecommunications Bureau

PETITION FOR LIMITED WAIVER OF SECTION 20.18(e)-(h)

Chicago 20 MHz LLC (the "Chicago Trust Property"), the licensee of broadband PCS station WPQL237 serving MTA003 (Chicago), hereby requests through counsel a waiver of the time periods set forth in the Commission's rules governing the deployment of Phase II enhanced 911 service. In particular, the Chicago Trust Property requests at least a six-month extension of the deadlines set forth in section 20.18(f)-(g) of the Commission's rules to begin the phase-in of its Phase II E911 service. This waiver request is based on exceptional circumstances arising from the fact that the Chicago Trust Property has been in a divestiture trust since August 29, 2000. Joseph J. Simons ("Trustee"), the trustee administering this divestiture trust, has recently entered into an agreement to transfer this licensee to a third-party buyer. Grant of this extension request will permit the Chicago Trust Property sufficient time to begin implementing its Phase II E911 deployment in an effective, orderly manner now that a proposed buyer for this licensee has been identified. The Chicago Trust Property will submit an updated Phase II

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implementation report on October 31, 2001, at which time it expects to have more specific information regarding the schedule for its deployment of Phase II E911 service.

I. BACKGROUND

As a condition of approval of the merger of Bell Atlantic Corporation (“Bell Atlantic”) and GTE Corporation (“GTE”), the Commission and the U.S. Department of Justice (“DOJ”) required the divestiture of certain overlapping cellular and PCS licenses held by these parties.¹ To afford themselves sufficient time to divest the licenses properly and so as not to delay closing of their merger, Bell Atlantic and GTE, with Vodafone AirTouch Plc and the Trustee, sought consent from the Commission and the DOJ to transfer control of or assign certain licenses to divestiture trusts to be administered by the Trustee as provided in section 20.6(e)(4) of the Rules. 47 C.F.R. § 20.6(e)(4). On June 26, 2000, the Commission issued an Order granting this consent. Order, *In re Applications of GTE Corporation, Vodafone AirTouch PLC, and Bell Atlantic Corporation For Consent to Transfer Control of or Assign Properties to Divestiture Trust and For Temporary Waiver of the CMRS Spectrum Cap Rule*, 15 FCC Rcd 11608 (2000) (“Order”).

Pursuant to this Order, three wireless systems were transferred to divestiture trusts administered by the Trustee, and two of these systems have now been divested to third-party buyers with the approval of the Commission and the DOJ. GTE Wireless San Diego LLC (the “San Diego Trust Property”), licensee of cellular station KNKA341 (San Diego MSA), was placed in a divestiture trust on June 29, 2000, and was transferred to

¹ See *Application of GTE Corporation and Bell Atlantic Corporation*, Memorandum Opinion and Order, CC Docket No. 98-184, FCC 00-221 (rel. June 16, 2000); *United States v. Bell Atlantic Corp., et al.*, Final Judgment, Civ. No. 1:99CV01119 (LFO) (D.D.C. Apr. 18, 2000) (“Final Judgment”).

AT&T Wireless Services of California, Inc. on September 29, 2000.² GTE Wireless Cincinnati LLC (the "Cincinnati Trust Property"), licensee of PCS station KNL236 (Cincinnati-Dayton MTA), was placed in a divestiture trust on August 29, 2000, and was transferred to VoiceStream PCS BTA 1 License Corporation ("VoiceStream") on June 15, 2001.³

One remaining wireless system – the Chicago Trust Property -- remains in a divestiture trust administered by the Trustee. Pursuant to the Commission's June 26, 2000 *Order*, the Chicago Trust Property was transferred to this trust on August 29, 2000. The Trustee recently entered into an agreement to sell this trust property to PrimeCo Acquisition LLC, and on June 25, 2001 the parties filed an application on FCC Form 603 seeking the FCC's consent to transfer control of this PCS licensee to PrimeCo Acquisition LLC.⁴ This application was accepted for filing and placed on public notice on July 5, 2001.⁵

II. PSAP REQUESTS

Sections 20.18(f) and (g) of the Commission's rules set forth the schedule by which wireless carriers must phase in Phase II E911 service. Under the schedule for network-based location technologies, for example, carriers must "provide Phase II 911 enhanced service to at least 50 percent of their coverage area or 50 percent of their population beginning October 1, 2001, or within 6 months of a PSAP request, whichever

² Public Notice, WTB Report No. 652 (released Sept. 27, 2000).

³ Public Notice, WTB Report No. 848 (released May 2, 2001).

⁴ File No. 0000499462.

⁵ Public Notice, WTB Report No. 903 (released July 5, 2001). In addition to the properties placed in divestiture trusts, Houston MTA, L.P., licensee of PCS station WPQL238 (Houston MTA), was placed in a trust administered by the Trustee for the benefit of AT&T Wireless Services of San Antonio, Inc. ("AT&T San Antonio") on August 29, 2000, and was transferred to AT&T San Antonio on December 29, 2000.

is later; and to 100 percent of their coverage area or 100 percent of their population within 18 months of such a request or by October 1, 2002, whichever is later.” 47 C.F.R. § 20.18(f). *See also* 47 C.F.R. § 20.18(g) (setting forth phase-in schedule for handset-based location technologies).

The Chicago Trust Property has received requests from six public safety answering points (“PSAPs”) for Phase II E911 service in areas in which the Trust Property provides coverage.⁶ It is currently in the process of working with each of these PSAPs to implement Phase II service in an effective manner. It is also in the process of determining whether these requests comply with section 20.18(j) of the rules, which provides that a carrier’s Phase II obligations are not triggered unless the PSAP “is capable of receiving and utilizing the data elements associated with the service and a mechanism for recovering the [PSAP’s] costs of the enhanced 911 service is in place.” 47 C.F.R. § 20.18(j). The Chicago Trust Property is filing the instant waiver request in the event it is determined that the PSAP requests it has received comply with the FCC’s rules and would, absent grant of the waiver, trigger an obligation to provide Phase II E911 service.

III. REQUEST TO EXTEND OCTOBER 1, 2001 DEPLOYMENT DEADLINE.

Overview. The Commission’s rules provide that a waiver may be granted “[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” 47 C.F.R. § 1.925(b)(3)(ii). In the case of

⁶ Two other PSAP Phase II requests have been received, but they request service in locations outside of the Chicago Trust Property’s current coverage area.

E911, the Commission has “recognized that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001, and indicated that these cases could be dealt with through individual waivers as these implementation issues are more precisely identified.” Fourth Memorandum Opinion and Order, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 16 FCC Rcd 3780, ¶ 43 (2000).

The Chicago Trust Property presents such exceptional circumstances given the fact that it has been in a divestiture trust since August 29, 2000, and the Trustee has only recently entered into an agreement to divest this property to a buyer subject to FCC and DOJ approval. As set forth below, the Chicago Trust Property was not in a position to conduct the necessary advanced planning or otherwise proceed with its Phase II E911 deployment until an agreement had been executed to divest this property to a viable buyer. Now that the Trustee has recently entered into such an agreement, the Chicago Trust Property has initiated its planning for Phase II E911 deployment.

Exceptional Circumstances Giving Rise to Extension Request. Deploying Phase II capability involves substantial costs and resources. A carrier must investigate various ALI technologies, coordinate with PSAPs that have requested Phase II service, select the technology that best suits its network and the FCC’s requirements, establish a capital expenditure plan, enter into contracts with vendors to acquire the necessary equipment and software, and install and test these upgrades. Different carriers will select different ALI technologies and deployment solutions depending on their network architectures and plans for other wireless systems that they may operate. Some carriers are pursuing

network-based solutions, others will use handset-based solutions, and still others will take a hybrid approach. Phase II deployment consequently requires careful planning that takes into account all of these factors and options. As the Commission has recognized, “advance planning is essential” to meeting the FCC’s Phase II deployment schedule. Third Report and Order, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 14 FCC Rcd 17388, ¶ 86 (1999).

The Chicago Trust Property, and the other trust properties administered by the Trustee, were not in a position to engage in this essential planning until the identity of the buyer to which the trust property would be divested became known. If, for example, an existing carrier acquired the trust property, it would integrate the trust property’s network into the carrier’s overall network of wireless systems. In such a situation, the trust property would most likely track the existing carrier’s Phase II deployment plan, including the ALI technology selected by that carrier. Doing so would not only integrate the trust property into the carrier’s operations, but also permit the trust property to take advantage of the vendor arrangements the carrier had already entered into for Phase II, as well as the internal resources the buyer had dedicated to E911 deployment.

On the other hand, if the trust property was sold to a new entrant, it would not need to be integrated into an existing network or Phase II deployment plan. The trust property would instead need to select an ALI technology and develop a deployment plan that best suited its individual system.

Two of the three divestiture trust properties, in fact, have been sold to existing wireless carriers with a national presence. As noted above, the San Diego Trust Property was divested to AT&T Wireless Services of California, Inc. on September 29, 2000. The

Cincinnati Trust Property was divested to VoiceStream PCS BTA 1 License Corporation on June 15, 2001 pursuant to a purchase agreement entered into in February 2001. Both of these properties consequently will deploy Phase II solutions in accordance with the overall Phase II deployment plans developed by these national carriers. Moreover, the Trustee engaged in extensive negotiations with two existing wireless carriers from late 2000 through May 2001 regarding the sale of the Chicago Trust Property, and it was uncertain until very shortly before the Trustee entered into the agreement to sell the Chicago Trust Property to the proposed transferee whether the property would be sold to a new carrier or to an existing carrier.

The proposed transferee of the Chicago Trust Property, in contrast to the buyers of the San Diego and Cincinnati Trust Properties, is a new entrant that is not operating other wireless systems. The Chicago Trust Property must therefore develop a Phase II deployment plan that will not be part of an existing carrier's broader Phase II solution. Moreover, the Trustee only recently entered into an agreement to divest the property. The Trustee entered into this agreement after being approached by a number of potential buyers and after encountering several unforeseen delays in divesting this property over the past year.⁷ The agreement recently entered into with PrimeCo Acquisition LLC was executed on June 22, 2001, and the parties filed an application with the Commission on June 25, 2001 seeking consent to transfer control of the Chicago Trust Property to the proposed buyer. As a consequence, the Chicago Trust Property has only in the past

⁷ These unexpected delays in divesting the trust property are described in two petitions the Trustee has filed with the Commission seeking extensions of the duration of the Chicago divestiture trust. *See* Petitions for Waiver and to Extend Divestiture Deadline, filed Jan. 16, 2001 and July 9, 2001.

several weeks initiated its Phase II E911 planning in anticipation of receiving FCC and DOJ approval of the proposed divestiture.

Workplan for Phase II Deployment. The Chicago Trust Property uses Lucent CDMA technology in its wireless system network. Now that a proposed transferee has been identified, the Chicago Trust Property has established the following workplan for upgrading its network to provide Phase II E911 service:

(1) Investigation of Available Technologies and Selection of Solution – Projected Completion Date: September 16, 2001. The Chicago Trust Property has already initiated the process of investigating the various technologies available for deploying Phase II service. The technologies include a handset-based (GPS chip set) solution, a network-based (triangulation) solution, and a hybrid (both GPS chip set and triangulation) based solution. It has met with Lucent (the Trust Property network infrastructure provider) to discuss possible Phase II technology solutions, and will be meeting with other vendors in the coming weeks. Phone meetings will be held to discuss all the technologies. Meetings are also being held with TCS (formerly XYPoint), which is the network integrator for the trust property. TCS is currently trailing the various technologies so that any technology chosen can be supported. Based on these discussions and its own investigation, the Chicago Trust Property will analyze the various options to determine which system will be most effective in providing Phase II E911 service for its network consistent with the Commission's requirements. During this time period the Chicago Trust Property will engage in the budgetary planning necessary in selecting a technology.

(2) Vendor Investigation and Selection – Projected Completion Date: October 15, 2001. The Chicago Trust Property will investigate the pricing, performance, and equipment availability offered by various vendors to provide the selected technology solution. Depending on the technology chosen, the Trust Property will most likely need to deal with various vendors to deploy fully an operational solution. This portion of the planning cycle will select a primary technology vendor as well as any support vendors needed (e.g., a CSRS, or Commercial Satellite Reference Service, in the handset or hybrid solutions). The Chicago Trust Property anticipates soliciting bids from a number of vendors if a choice is available.

(3) Submission of Updated Implementation Report: October 31, 2001 – The Chicago Trust Property will submit an updated report on its Phase II E911 deployment by October 31, 2001. By this time it expects to have selected a deployment solution as well as the vendors that will assist the Chicago Trust Property in its Phase II implementation. Production information as well as pricing and manufacturer volume commitments should also be available which will add to the accuracy of a deployment schedule. The Chicago Trust Property should consequently be in a position at that point to provide a more

complete report to the Commission regarding its Phase II deployment plans and schedule.⁸

(4) Testing, Engineering Planning, and Vendor Contracting – Projected Completion: December 31, 2001. The Chicago Trust Property will require the vendors it selects to provide reasonable assurances that they can deploy the selected location technology solution in a manner that meets the FCC's Phase II accuracy standards. Many of the vendors that the Chicago Trust Property has contacted are in the middle of field trials. The information from these trials will be a critical factor in the technology and vendor selection process. For example, many carriers have determined that a hybrid solution will be the most effective method for complying with the FCC's Phase II mandate, and are working with vendors to conduct trials to implement the handset component of such a solution. Even though the handset products being used are prototype in nature, the information will be valuable. In addition to these tests and trials, the Chicago Trust Property will during this time period engage in engineering planning with its vendors and also negotiate contracts with these vendors to deploy a Phase II solution in an effective manner and in compliance with the FCC's accuracy standards.

(5) Solution Implementation – Projected Completion Date: April 1, 2002. Once a technology and the vendors are selected and vendor contracts have been entered into based on assurances of compliance with FCC standards, the Chicago Trust Property will begin implementation of its Phase II solution in the specific coverage area of the PSAPs that have requested and are in a position to receive Phase II data. This is a complex process given the different yet interrelated components of a wireless communications system – handset, cell site, network signaling and switching functions, location equipment and software. Depending on the technology it selects, the Chicago Trust Property will need to install the necessary software and hardware to upgrade its switches and cell sites to provide Phase II service, and also possibly to begin selling and activating location-capable handsets upon availability.

The Chicago Trust Property may need to revise the schedule described above as it proceeds with Phase II implementation program. Indeed, a large number of carriers have already submitted partial waiver requests due to the lack of availability of the necessary network upgrades and Phase II-capable handsets. *See, e.g., Verizon Wireless Updated Phase II E911 Report and Request for Limited Waiver*, filed July 25, 2001, CC Docket

⁸ On November 8, 2000, the Chicago Trust Property submitted a request with the Commission asking it to extend the November 9, 2000 deadline for filing its Phase II E911 implementation report until 45 days after the property was divested to a third-party buyer. This extension request is still pending. The Trustee and PrimeCo Acquisition LLC anticipate that the consummation of the transfer of the Chicago Trust Property to PrimeCo Acquisition LLC will take place in September or October 2001 depending on the date on which the Commission grants their pending transfer application. The updated implementation report described above would thus be submitted after this anticipated consummation date.

No. 94-102; Inland Cellular Telephone Co. Petition for Limited Waiver of Sections 20.18(e) and (g) of the Rules, filed July 30, 200, CC Docket No. 94-102. In the event that the Chicago Trust Property similarly determines that vendors are unable to provide the necessary upgrades and equipment in a timely manner to meet its proposed April 1, 2002 deployment target, it may need to seek an additional extension of the deployment schedule set forth in the Commission's rules.

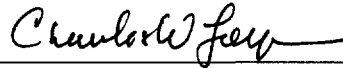
Request for Extension. The Chicago Trust Property requests at least a six-month extension of the deadlines set forth in the Commission's rules for it to begin the phase-in of its Phase II E911 service. The Trustee has only recently entered into an agreement to divest this property to a buyer subject to approval by the Commission and the DOJ. It would have been premature for the Chicago Trust Property to initiate its Phase II planning prior to the signing of this agreement since, as explained above, the identity of the buyer had a substantial influence on the manner in which Phase II could be efficiently and effectively deployed. Based on these exceptional circumstances, the Chicago Trust Property seeks at least a six-month extension of the Commission's Phase II deployment deadlines to allow it take the many steps necessary for deployment. The Chicago Trust Property will submit an updated Phase II implementation report on October 31, 2001. At that time it expects to have selected a technology solution and vendors to deploy such a solution. Depending on equipment availability and other factors, it may need to seek a further extension of the Commission's Phase II E911 implementation deadlines.

Grant of this extension request will serve the public interest by facilitating the orderly divestiture of this wireless licensee that was ordered by the Commission as part of its approval of the Bell Atlantic and GTE merger. It will provide the Chicago Trust

Property additional time, now that a proposed buyer has been identified, to begin developing and implementing an effective Phase II E911 deployment solution.

Respectfully submitted,

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August 9, 2001

CERTIFICATE OF SERVICE

I, Charles W. Logan, do hereby certify that on this 9th day of August, 2001, I caused a copy of the foregoing Petition for Limited Waiver of Section 20.18(e)-(h) to be served by hand upon each of the parties listed below.

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